

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Jose and Amelia Silva,

Plaintiffs,

v.

T-Mobile USA, Inc.,

Defendant.

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:
: Civil Action No.: _____
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:

:
: **COMPLAINT**
: **JURY TRIAL DEMANDED**
:
:
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For this Complaint, the Plaintiffs, Jose and Amelia Silva, by undersigned counsel, state as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business here, Plaintiffs reside in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. The Plaintiffs, Jose Silva (hereafter "Jose") and Amelia Silva (hereafter "Amelia," and together with Jose, the "Plaintiffs"), are adult individuals residing in Philadelphia, Pennsylvania, and are each a "person" as defined by 47 U.S.C. § 153(10).
4. The Defendant, T-Mobile USA, Inc. ("T-Mobile"), is a Washington business entity with an address of 12920 S.E. 38th Street, Bellevue, Washington 98006, and is a "person" as defined by 47 U.S.C. § 153(10).

FACTS

5. Within the last four (4) years, T-Mobile contacted Plaintiff by placing calls daily to Plaintiffs' cellular telephones in an attempt to collect on a payment.

6. At all times mentioned herein, T-Mobile placed calls to Plaintiffs using an automated telephone dialer system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.

7. When answering T-Mobile's ATDS calls, Plaintiffs heard a pre-recorded message stating Defendant was calling regarding Amelia's account.

8. On several occasions, when Jose got through to a live representative, he explained that Plaintiffs did not owe any money to T-Mobile as their contract was previously paid in full.

9. Additionally, Jose requested that T-Mobile cease calling his cellular telephone.

10. Amelia also requested that T-Mobile cease calling her cellular telephone.

11. Nonetheless, Defendant proceeded to hound Plaintiffs with ATDS calls to their cellular telephones.

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, ET SEQ.**

12. The Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

13. The Defendant contacted the Plaintiffs by means of automatic telephone calls or prerecorded messages at a cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

14. Plaintiffs revoked their consent to be contacted by Defendant on their cellular telephones by their repeated demands to cease calling their cellular telephones.

15. Defendant continued to place automatic telephone calls to Plaintiffs' cellular telephones knowing that it lacked consent to call their numbers. As such, each call placed to Plaintiffs was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

16. The telephone numbers called by Defendant were assigned to a cellular telephone service for which Plaintiffs incur charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

17. The calls from Defendant to Plaintiffs were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. As a result of each of Defendant's negligent violations of the TCPA, Plaintiffs are entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

19. As a result of each of Defendant's knowing and/or willful violations of the TCPA, Plaintiffs are entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that judgment be entered against the Defendant:

1. Statutory damages of \$500.00 for each violation pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful or intentional pursuant to 47 U.S.C. § 227(b)(3)(C);
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: November 8, 2013

Respectfully submitted,

By /s/ JBB8445

Jody B. Burton, Esq.
Bar No.: 71681
LEMBERG & ASSOCIATES L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorneys for Plaintiffs